

March 30, 2005

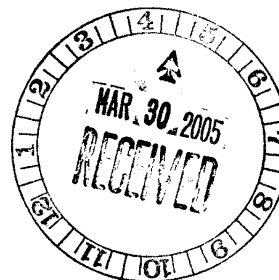
Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

MAR 31 2005

Part of
Public Record



RE: Finance Docket No. 34666, *Columbus and Greenville Railway Co. – Verified Notice of Exemption – Acquisition and Operation of 2.99 Miles of Newly Constructed Track in Greenwood, Leflore County, MS*

Dear Secretary Williams:

Please find enclosed the original and ten (10) copies of Morris Recycling, Inc.'s Emergency Petition to Stay and Petition to Revoke Exemption for filing in the above referenced proceeding. Also enclosed is one diskette with a copy of the Petition in PDF format and Word format.

An extra copy of Petition is enclosed for stamping and returning to our offices.

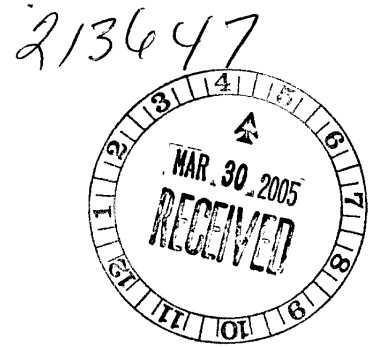
Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Michael H. Higgins

Jeffrey O. Moreno
Michael H. Higgins
Counsel for Complainant

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34666

COLUMBUS AND GREENVILLE RAILWAY CO.
—VERIFIED NOTICE OF EXEMPTION—
ACQUISITION AND OPERATION OF 2.99 MILES OF NEWLY
CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY, MS

**EMERGENCY PETITION TO STAY AND
PETITION TO REVOKE EXEMPTION**

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*Attorneys for
Morris Recycling, Inc.*

Dated: March 30, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34666

COLUMBUS AND GREENVILLE RAILWAY CO.
—VERIFIED NOTICE OF EXEMPTION—
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**EMERGENCY PETITION TO STAY
AND PETITION TO REVOKE EXEMPTION**

Comes now, Morris Recycling, Inc. ("Morris"), by and through its undersigned counsel, and submits this Emergency Petition to Stay and Petition to Revoke the Notice of Exemption filed in this proceeding by the Columbus & Greenville Railway Company ("C&G") on March 23, 2005. In this proceeding, C&G purportedly seeks to acquire and operate a 2.99 mile rail line constructed and owned by the City of Greenwood, County of Leflore, MS ("City"). It is clear from the Notice that the subject rail line was constructed as a common carrier rail line. See Notice of Exemption at 3. It is also clear that the City failed to obtain prior approval from the Surface Transportation Board ("STB" or "Board") before constructing the subject line, pursuant to 49 U.S.C. § 10901, or to obtain an exemption from these requirements. Accordingly, the exemption sought by C&G must be stayed and/or revoked to permit the Board to conduct the appropriate statutory review. In the absence of proper authority from the Board for construction and operation of the line, C&G's Notice is void ab initio to the extent that it purports to authorize conveyance of the line.

I. IDENTITY OF MORRIS RECYCLING INC.

Morris is a recycling company headquartered in New Albany, MS. Its seven affiliated processing stations serve a 150 mile radius that includes all of north Mississippi and parts of Alabama, Arkansas, and Tennessee. The affiliated stations recycle primarily ferrous and non-ferrous metals, but also process paper and other recyclable materials. Morris's affiliate facility located in Greenwood, MS is a shipper on the railroad line that C&G refers to as "its main line railroad through the City of Greenwood." See Notice of Exemption at 3. The Greenwood facility is a state-of-the-art facility in terms of environmentally conscious recycling operations. Because the conveyance of the line purportedly subject to C&G's Notice of Exemption is the initial step in a series of transactions planned by C&G that will deprive Morris's Greenwood facility of direct rail service—through the elimination of service over the "main line"—Morris has a strong interest in the legality of this proceeding.

II. ARGUMENT

A. Conveyance of the Line Must Be Stayed to Permit the Board to Complete a Full and Complete Review of the Transaction.

Pursuant to 49 U.S.C. § 10901, an entity such as the City of Greenwood must obtain prior approval from the Board before constructing a new line of rail. The statute provides as follows:

(a) A person may—(1) construct an extension to any of its railroad lines; (2) construct an additional railroad line; (3) provide transportation over, or by means of, an extended or additional railroad line; or (4) in the case of a person other than a rail carrier, acquire a railroad line or acquire or operate an extended or additional railroad line, only if the Board issues a certificate authorizing such activity[.]

49 U.S.C. § 10901. An entity may also obtain prior authority from the Board for construction of a rail line pursuant to an individual exemption under 49 U.S.C. § 10502(a):

The construction, acquisition, and operation of railroad lines require prior Board approval. The Board's authorization may take the form of a 'certificate of public convenience and necessity' issued under 49 U.S.C. 10901, or, as [the applicant] has requested here, an exemption under 49 U.S.C. 10502 from the formal application procedures of section 10901.

See STB Finance Docket No. 34391, New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co.—Construction, Acquisition, and Operation Exemption—In Wilmington and Woburn, MA, 2004 STB Lexis 138, *4 (Served March 2, 2004). As relevant to the Notice, the City of Greenwood neither sought, nor obtained authority from the Board before constructing a line of rail that is, and always has been, intended for common carrier operations. Accordingly, the Board should stay or revoke the exemption, which purports to authorize conveyance of the line, so that the Board may conduct a complete review in accordance with the applicable statutory standards.¹

On its face, the Notice indicates that the City constructed the subject line for the purpose of common carrier operations and that C&G plans to provide such operations. Thus, the City's unauthorized construction does not fall within the narrow exception provided at 49 U.S.C. § 10906, which pertains to construction of "spur, industrial, team, switching, or side tracks." See 49 U.S.C. § 10906. C&G's Notice makes plain that the 2.99 mile by-pass track does not qualify: "C&G has reached an agreement with the City of Greenwood, MS, wherein a like kind exchange of properties will take place. The bypass track is newly constructed. There is no current operator. C&G will be the operator and have full control of operations on the line after acquisition." See Notice of Exemption at 3 [Emphasis added]. Indeed, construction and

¹ The City of Greenwood's status as a public entity did not, and does not allow it to avoid the requirements of 49 U.S.C. § 10901. At 49 U.S.C. § 10102(4), the definition of "person" includes the expansive definition set forth at 1 U.S.C. § 1. See STB Finance Docket No. 33731, Ellis County Rural Rail Transportation District—Construction and Operation Exemption—Ellis County, TX, 2000 STB Lexis 87 (Served Feb. 15, 2000) (Public entity obtains exemption authority to construct a new line of rail where operations would be conducted by third-party); STB Finance Docket No. 34395, City of Peoria, IL, d/b/a Peoria, Peoria Heights & Western Railroad—Construction of Connecting Track Exemption—in Peoria County, IL, 2004 STB Lexis 120 (Served Sept. 27, 2004).

conveyance are a quid pro quo for abandonment of C&G's "main line through the City of Greenwood" in Docket AB-297 (120-X), which C&G intends to file on or about April 5, 2005. See Notice of Exemption at 3-4. Manifestly, the subject track is a common carrier line of railroad, and therefore, the City violated federal law by failing to obtain construction authority from the Board.² Thus, the exemption must be stayed or revoked so that the Board may conduct an appropriate review of the entire transaction.³

The Board's authority to exempt certain transactions from regulation is predicated upon a determination that the application in whole or in part of a provision of the ICC Termination Act:

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and (2) either—(A) the transaction or service is of limited scope; or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

49 U.S.C. § 10501(a). The entire transaction contemplated by C&G and the City—involving construction of a new common carrier line, the conveyance of a line, and the abandonment of an active rail line—is not limited in scope. And, regulation is warranted to protect at least one shipper, Morris, from an abuse of market power. C&G should not benefit from the City's circumvention of the prior approval requirements of 49 U.S.C. § 10901 that applied to the City's construction of the by-pass line. Considering the larger transaction and its implications, regulation is clearly necessary to carry out the rail transportation policy.

Therefore, the exemption and the underlying conveyance must be stayed, or revoked, to permit the Board to review the transaction under the applicable provisions of the ICC Termination Act.

² Because the City did not apply for any form of construction authority, it deprived the Board of any opportunity to conduct the environmental review required under federal law. See 49 C.F.R. § 1105 et seq.

³ Because the City did not apply for any form of construction authority, it deprived the Board of any opportunity to conduct the environmental review required under federal law. See 49 C.F.R. § 1105 et seq.

B. The Exemption is Void Ab Initio Because it Contains False and Misleading Information.

Pursuant to 49 C.F.R. § 1150.41(c), a transaction is void ab initio if it contains false or misleading information. As explained above, C&G's Notice is plainly misleading because it suggests that construction of subject line was legally authorized. In fact, the opposite is true: the City lacked legal authority to construct the common carrier line that C&G now purports to acquire. Because the Notice is misleading in this key regard, it is void ab initio.

III. REQUEST FOR RELIEF

WHEREFORE, Morris Recycling, Inc., respectfully requests that the Board stay the effectiveness of the Notice of Exemption subject to this proceeding, or in the alternative, revoke the exemption sought by Columbus and Greenville Railway Company, so that the Board may consider the transaction in light of the applicable standard.

Respectfully submitted,

Michael H. Higgins

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*Attorneys for
Morris Recycling, Inc.*

CERTIFICATE OF SERVICE

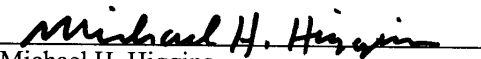
I hereby certify that on this 30th day of March, 2005, served a copy of the "Emergency Petition to Stay and Petition to Revoke Exemption" upon the following persons, service indicated below:

Facsimile and Overnight Mail

H. Lynn Gibson
Columbus and Greenville Railroad Company
Executive Vice President/CFO
201 19th Street North
Columbus, Mississippi 39703

Regular Mail

Billy B. Bowman
Brewer, Deaton & Bowman
P.O. Drawer B
Greenwood, Mississippi 38935-0706


Michael H. Higgins